

IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT
JODHPUR

ORDER

Madan Lal

Vs. State of Rajasthan & Anr.

S.B.CR.MISC. PETITION NO.347/2005

DATE OF ORDER

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November 07, 2006

PRESENT

HON'BLE MR.JUSTICE H.R.PANWAR

Mr.C.P.Soni, for the petitioner.

Mr.Ashok Upadhyaya, P.P.

Mr. J.S.Choudhary, for non-petitioner No.2.

BY THE COURT:

By the instant criminal misc. petition under section 482 Cr.P.C., the petitioner seeks quashing of FIR No.47 dt. 26.2.2005, Police Station, Merta City for the offences under sections 420, 467, 468, 471 I.P.C..

I have heard learned counsel for the petitioner, Public Prosecutor for the State and the counsel appearing for the complainant as in the instant case, the complainant has been impleaded as party non-petitioner. Carefully gone through the FIR and the investigation diary.

It is contended by the learned counsel for the petitioner that the FIR in question is a second FIR and therefore, it is bad in the eye of law and deserves to be quashed.

Learned Public Prosecutor and the counsel for the complainant submit that one Chhotu Ram sent a report by post to the Superintendent of Police, which was marked by Superintendent of Police as complaint and sent to the S.H.O., Police Station as the complaint under Chapter V (iv) of the Rajasthan Police Rules, 1965 (for short 'the Rules' hereinafter). The whereabouts of the complainant was not known and, therefore, on the preliminary inquiry on a complaint under Chapter V (iv) of the Rules, the FIR No.47 dt. 26.2.2005 was lodged by Smt Renu Thakur, Sub-Inspector posted at Pachuri, Distt. Nagaur. After lodging the first information report, the matter was investigated by another officer Shri Ramkaran, rank of Circle Officer. At any rate, after lodging the report by the complainant, the complainant had nothing to do except that she is a witness to the case. The allegations against the petitioner are serious in nature regarding tax evading by deceitful or fraudulent means by forging chasis number and the engine number as also in registration. On perusal of the police investigation diary, it appears that FIR and the investigation diary disclose the cognizable offence as noticed above. It cannot

be said that the FIR is absurd or barred by any provision of law. Counsel for the petitioner made an attempt to say that the FIR is outcome of malice. From the investigation diary and the investigation taken up till now it does not appear prima facie that the investigation is out come of some malice. The question of evading the tax by deceitful or fraudulent means by forging chasis number and the engine number is before the police, which is yet to be investigated. On being asked to the learned counsel for the petitioner that if this is second FIR, then which one is the first FIR, he has failed to show any FIR prior to the FIR in question and rightly so as the report, sent by alleged Chhotu Ram to Superintendent of Police, who was subsequently not found, was neither registered as FIR nor investigated as crime report but the report was only investigated under Chapter V of the Rules. In the circumstances, therefore, it cannot be said that prior to FIR in question any other FIR was registered on same facts.

In *Central Bureau of Investigation vs. Rai Shanker Srivastava, IAS & Anr.*, **AIR 2006 SC 2872**, the Hon'ble Supreme Court held that when exercising jurisdiction under section 482 of the Code, the High Court would not ordinarily embark upon an enquiry whether the evidence in question is reliable or not or whether on a reasonable appreciation of it

accusation would not be sustained. That is the function of the trial Judge. Judicial process should not be an instrument of oppression , or, needless harassment. Court should be circumspect and judicious in exercising discretion and should take all relevant facts and circumstances into consideration before issuing process, lest it would be an instrument in the hands of a private complainant to unleash vendetta to harass any person needlessly. At the same time the section is not an instrument handed over to an accused to short-circuit a prosecution and bring about its sudden death. The scope of exercise of power under section 482 of the Code and the categories of cases where the High Court may exercise its power under it relating to cognizable offence to prevent abuse of process of any court or otherwise to secure the ends of justice have been stated in State of Haryana vs. Bhajan Lal, **AIR 1992 SC 604**. However, the Apex Court held that power should be exercised sparingly and that too in rarest of rare cases. The illustrative categories have been indicated by the Apex Court in State of Haryana vs. Bhajan Lal (supra).

So far as allegation of malice is concerned, the Apex Court held that the allegations of mala fides against the informant are of no consequence and cannot by themselves be the basis for quashing the proceedings. The reference may be made to the

decisions of Hon'ble Supreme Court in Dhanalakshmi vs. R.Prasanna Kumar (1990 Supp. SCC 686), State of Bihar vs. P.P.Sharma (AIR 1996 SC 309), Rupam Deol Bajaj v.s Kanwar Pal Singh Gill (1995 (6) SCC 194), State of Kerala vs. O.C.Kuttan (AIR 1999 SC1044), State of U.P. vs. O.P.Sharma (1996 (7) SCC 705), Rashmi Kumar vs. Mahesh Kumar Bhada (1997 (2) SCC 397, Satvinder Kaur vs. State (Govt. of NCT of Delhi) (AIR 1999 SC 3596), Rajesh Bajaj vs. State of NCT of Delhi (1999 (3) SCC 259) and State of Karnataka vs. M.Devendrappa and Anr. (2002 (3) SCC 89).

On close scrutiny of the material available right from the FIR and investigation diary, in my view it cannot be said that the case of the petitioner falls in any of the illustrative categories in view of the decision of Hon'ble Supreme Court in State of Haryana vs. Bhajan Lal (supra). It cannot be said that the FIR suffers from malice. The complainant is a police officer and the question involved in the instant case is evading the tax under the Motor Vehicle Taxation Act by dishonestly or fraudulently committing the forgery. Ultimately, the tax is required to be paid to the State. In the circumstances, therefore, it cannot be said that to allow the FIR and the investigation thereunder would result in serious miscarriage of justice or abuse of process of any court.

In this view of the matter, the petition has no force and the same, is therefore, dismissed. Stay petition also stands dismissed.

[H.R.PANWAR],J.

m.asif/-